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## REPORT OF THE COMMITTEE ON CRIMINAL STATISTICS OF THE AMERICAN PRISON ASSOCIATION.<sup>1</sup>

EUGENE SMITH.

At the International Prison Congress held at Washington last year the foreign delegates, while they seemed favorably impressed by most of our institutions, were outspoken in condemnation of our county jails and our criminal statistics. They could not repress their amazement at the dearth of official statistics regarding crime in the United States. Possibly it may be doubted whether any of the novelties they observed here produced on their minds so lasting and injurious an impression of this country, regarded from the point of view of scientific penology, as that caused by the meagerness and practical inutility of our criminal statistics. It must be freely admitted that the English and some of the continental statistics of crime are far in advance of our own in comprehensiveness, in method, and in scientific value.

But the inadequacy of the criminal statistics of the United States is largely owing to a condition which does not exist in England or hardly on the Continent. We are confronted with difficulties that are practically unknown on the other side of the Atlantic; difficulties inherent in the dual system of government existing in this country. In the division of sovereignty between the Federal Government and the States, the treatment of crime falls within the jurisdiction of the States. Congress, it is true, acting within the limits closely defined in the Constitution, has the power to declare certain acts which are injurious to the nation to be crimes. Thus there is a Federal Criminal Code, violations of which are within the exclusive jurisdiction of the Federal Courts. But these crimes are only those that bear relation to the central government; they are comparatively few in number.

The vast volume of crime in this country comes under the exclusive jurisdiction of the separate States. The establishment of police and constabulary forces, the detection and arrest of offenders, the trial and sentencing of criminals, the administration of prisons, all are included within the functions of the States. The rules and regulations governing the police, the courts, the prisons, all the details of their administration and of their records are thus matters of State jurisdiction. And in

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<sup>1</sup>Read at the convention of the American Prison Association at Omaha, October, 1911.

those matters that fall within the jurisdiction of the States, the States have absolute sovereignty; the Federal Government is as powerless to direct or in any manner to interfere with the action of the State in the lawful exercise of its exclusive jurisdiction, as the State is powerless to obstruct the Federal Government in the exercise of its exclusive jurisdiction. It is only when the action of the State infringes upon the Federal Constitution that it becomes subject to any coercion by the central government.

All that the Federal Census Bureau attempted in the direction of criminal statistics, prior to the year 1904, related simply to prisoners in actual confinement in prisons. The Federal agents were able to count these prisoners and to distinguish between the male and the female and the white and the colored, without any aid from the States; but, as to every other item regarding the prisoners, the United States Census was necessarily nothing but a transcript from the prison records. In 1904, the Census for the first time enlarged its scope by gathering statistics relating to persons committed for crime during that calendar year. In this new departure, the Census Bureau was entirely limited to an examination of the books and records kept in the prisons. The extent and the value of any criminal statistics that have been, or that can possibly be, collected by the Federal Government are necessarily measured by the completeness and accuracy of the books and records maintained by State institutions; but, since these books and records are under the exclusive jurisdiction of the States, the Federal authorities have no power to direct or to supervise in any manner the system by which the records shall be kept; they have simply the power of inspection and transcription.

The Constitution empowers the Federal Government to make only a decennial "enumeration" of the persons within the United States. This gives the implied power to restrain the States from preventing or interfering with such enumeration, but it extends no further; it certainly confers no power on the central government to direct or compel the States to keep records of their own affairs in any prescribed form or to keep any records at all.

The contrast, therefore, between the authority of our Federal Government and the authority of European nations in compiling criminal statistics is most marked. In Europe, the sovereign power in each nation can prescribe the uniform system upon which all public records shall be kept, the data which they shall embody and the manner in which these data shall be collected and verified, and can enforce obedience to its requirements by every official and every institution within the national boundaries. In the United States, on the contrary, the central

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government can gather only data over the collection and verification of which it has no control.

State records, so far as they contain matter available for the compilation of criminal statistics, are now woefully imperfect—imperfect in two main particulars. First, imperfect because they are kept in a careless and perfunctory manner and without pains to verify the accuracy of entries made in them; secondly, imperfect, especially for purposes of comparison between records of different States, because they are not constructed upon any comprehensive and uniform plan. Furthermore, every court, every prison, the police of every city in every State, is a separate institution maintaining its records upon its own individual plan, without much serious effort to assimilate its plan to that of other like institutions even within its own State. Certain entries are made regarding each person convicted of crime, based mainly upon the answer given by the convict himself to questions put to him.

Is he a native of this country or of foreign birth? Doubtless many an immigrant, in fear of deportation or under the impression that natives may receive more element treatment, falsely declares that he was born in the United States, and so he is numbered statistically among the native born. What is his age? It is of advantage to an offender to be under twenty-one years of age that he may enjoy the benefit of that tenderness of spirit which the law exhibits toward minors; it is of advantage to be under the age of thirty years in the States that have a reformatory to which only those under thirty years of age can be sentenced, unless indeed the offender prefers confinement in a State prison to the strenuous life of the reformatory. The inducement is strong to state the age falsely. Is he married or single? If the offender is living in circumstances that are scandalous because he is unmarried, he is apt to find no difficulty in stating that he is "married." Has he ever been divorced? If he has been, the temptation is great to avoid embarrassing explanation. In these cases and all similar ones, statements made by the offender himself have very slight statistical value; they come from an interested and untrustworthy witness. Every reasonable effort should be made, either before the trial or after conviction, to gain from sources, outside the offender himself, all available information regarding his previous career, his environment, his habits of life and associations, and especially to verify all such items as enter into the statistical record. Until this is done, the classifications of prisoners contained in our criminal statistics stating how many are adults and how many are minors, stating how many are natives and how many foreign-born, stating how

many are married and how many single, cannot be received with confidence in their accuracy.

Why is it that the existing State records relating to crime are kept in a manner so imperfect and perfunctory? Perhaps it is a sufficient answer to say—because they are not subjected to supervision or control by any central authority. A few of the States have passed laws requiring annual returns to be made to the Attorney-General or to the Secretary of State by criminal courts, county clerks or prosecuting attorneys, showing the number of convictions for crime during the year, together with varying personal details. In most of the States no laws, even of this inadequate kind, have been enacted. But these laws have proved, so far as they have any statistical value, to be practically a dead letter.

The records of the criminal courts are committed to the clerks of the court; now, to gain the essential statistical facts regarding persons brought to trial, and to transcribe them faithfully in the records, demands of the clerks laborious and conscientious work; the work actually done will always be performed in a lax and slovenly manner so long as it is not reviewed or supervised by any superior authority. It now receives, in fact, practically no supervision whatever. The Attorney-General or Secretary of State simply receives the returns in whatever form they may come to him. If any court fails to send in returns or if any court fails to keep any statistical records at all, no one is greatly disturbed and no coercive measures are thought of.

In this deplorable, chaotic condition of the very sources from which all statistical matter must be drawn, it is hopeless to look for any improvement in our Census statistics, unless a radical change can be effected in State administration. The records of the police, the courts, the prisons, can be made of statistical value only by the action of the state itself; and there is apparent but one method by which the State can act to this end. There should be established in each State a permanent Board or Bureau of Criminal Statistics, whether as an independent body or as a department of the office of the Attorney-General or of the Secretary of State. This Bureau should be charged with the duty of prescribing the forms in which the records of all criminal courts, police boards and prisons shall be kept and of specifying the items regarding which entries shall be made. The law creating the Bureau should direct that the forms prescribed by it should be uniform as to all institutions of the same class to which they respectively apply and be binding upon all institutions within the State. The Bureau should issue general instructions governing the collection and verification of the facts to be stated in the record; it should also be its

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duty, and it should be vested with power, to inspect and supervise the records and to enforce compliance with its requirements. Such a Bureau might secure a collection of reliable statistical matter, uniform in quality throughout the State. Indiana is now, I believe, the only State in the Union where such a Bureau exists.

But even this result is not enough. Supposing all the criminal records within each separate State were made uniform throughout the State, still they would not be available for comparison or for the purposes of a National Census, unless all the States could be brought to adopt the same form and method so that all criminal records throughout the Union could be kept upon one uniform plan. Here we encounter a serious obstacle. The diversity and conflict of State laws are crying evils of our time, universally recognized and denounced and yet the most strenuous efforts to bring about harmonious action between the legislatures of separate States have always failed. No single statute, however skilfully drawn, proposed for universal acceptance, has ever yet been adopted by all the States of the Union. Still, the States *must* act in unison upon this matter of uniform criminal records or else our statistics of crime must continue to be a national failure and a national reproach.

Not the slightest reflection can be cast upon the Federal Census Bureau; on the contrary, when consideration is taken of the fragmentary and chaotic State records with which the Census Bureau had to deal, the systematic and orderly results and the general deductions embraced in the Census Report of 1904 must be regarded as a signal scientific triumph.

Uniformity in criminal records throughout the Union we have seen to be an imperative need; is it a visionary ideal, impossible of attainment? If there is any means through which the ideal can be realized it is through the agency of State Bureaus of Criminal Statistics, such as have just been suggested. Each of these State Bureaus, in preparing uniform plans and forms for its own State, would naturally place itself in touch with the National Census Bureau; while the National Bureau would not be legally vested with the slightest power to dictate to the State Bureau or to direct its action, *practically* its wide experience and grasp of the entire situation would enable the Federal Bureau to wield commanding influence in shaping the action of every State Bureau. If the creation of efficient State Bureaus, of the kind indicated, in the several States could only be secured, it is not chimerical to believe that, through the dominating influence of the Federal Census Bureau tactfully exerted, a uniform system of statistical records relating to crime could ultimately be established throughout the United States. It is the first step that costs. If a few of the leading States in the Union could

be induced to establish such a Bureau—if to Indiana could be added New York, Illinois, Nebraska and, in the South, Virginia—the force of example would be potent in the sister States.

Professor Mayo-Smith in his work on the "Science of Statistics" states that criminal statistics present the most complicated and difficult problems within the scope of the science. Some of the difficulties and elements of uncertainty attending such statistics have been adverted to; there are so many unknown and unascertainable factors affecting the problems of crime that conclusions drawn from criminal statistics must be received with the utmost caution. Statistical variations that seem on their face to point in a certain direction may be really caused by facts pointing in exactly the opposite direction.

One exceedingly common and popular error needs special mention; a marked increase in the number of convictions for crime indicates to the public mind an increase necessarily in the volume of crime committed. In fact, it may be owing to increased activity and efficiency on the part of the police and detective officers, to greater severity and thoroughness in the administration of the courts, to a change in the economic conditions of the community, to diminished care and skill on the part of offenders in escaping detection; indeed, there are many possible factors that may have combined to produce an unusual statistical result. A slight change in the laws or methods of procedure may cause startling statistical fluctuations. For example, in the year 1890, the number of convictions for drunkenness in Massachusetts was 25,582; two years later, the number had fallen to 8,634. An amazing diminution of drunkenness in Massachusetts—nearly 70 per cent. Not at all; it was owing to a new statute passed in 1891 the effect of which was that only those arrested for the third time within a year were subject to conviction.

The congestion of population in cities and the progress of invention necessitates every year the enactment of numerous statutes and municipal ordinances making certain acts, that are harmful to the public, misdemeanors (that is, legally crimes); but these acts, committed in large part through ignorance or negligence, are not essentially of a criminal nature. Statistically, they swell the number of crimes committed, but most of them are not crimes in the meaning popular usage attaches to that word.

These considerations suggest that all attempts to draw conclusions from, and to explain the significance of, the rise or fall of the statistical barometer must be conducted with extreme caution.

An error into which speakers and writers upon crime are prone to fall is that of regarding the statistics of crime as a measure of the total

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volume of crime committed in the country, affording an answer to the vital question—Is crime increasing? There are two fundamental facts relating to crime that must never be forgotten. First, that criminal statistics are, and must necessarily always be, confined to those crimes that are known and are officially acted upon by the police or the courts. Secondly, that there is a large number of crimes that are committed secretly and are never divulged, the perpetrators of which are never detected, and crimes that never result in the apprehension of the offender. The crimes of this second class cannot possibly enter into any criminal statistics and yet they form a very large part of the total volume of crime committed. It does not seem to be commonly appreciated that these unpublished, unpunished crimes, which can never be included in any criminal statistics, probably far exceed in number those that are followed by conviction and punishment.

A striking example of this class of unpublished crimes comes to the memory of the writer of this report, connected with a gentleman who was his personal friend. At the time of the occurrence to be related, this gentleman, who may be called James Simpson, had retired from business in his old age. He was not wealthy, but from a long and industrious life had saved sufficient means to enable him to pass his closing years in comfort. He received a call one day from the cashier of a bank who stated that he had come to see Mr. Simpson about the payment of these notes of his, exhibiting a number of promissory notes signed "James Simpson" and aggregating in amount some \$25,000. Mr. Simpson, who had not before heard of any such notes, perceived at a glance that his signature to them had been forged, but he was shocked to recognize by the same glance that the notes throughout were in the handwriting of his own son—the son had forged his father's signature. He was doubtless unable to conceal his agitation, for the cashier in alarm asked: "The signatures are yours, aren't they?" The father was immediately confronted with a tragical dilemma. If he should adopt the notes, as if they were genuine, he was at a loss to know how he could pay them; he would have to mortgage his property; it would subject him to great difficulty and privation; perhaps he would have to try to get into business again. On the other hand, if he should repudiate the notes as forgeries, there flashed before his mind visions of a public trial before a criminal court, his son the prisoner at the bar, the inevitable sentence, his only son a State prisoner in prison garb, doomed to end his life in disgrace and ruin. There was no time for deliberation; the crucial question: "The signatures are yours, aren't they?" must be met without hesitation or wavering. The father promptly answered—



and the same answer would be given probably in ninety-five cases out of a hundred—he said quietly—"Yes, they are my notes."

This example recalls another, relating to another friend of the writer, the narration of which may be excused as the circumstances attending it were peculiarly interesting and strange. A merchant in the city of New York had in his employment a bookkeeper who had served him for twenty years and was trusted without limit. By sheer accident the employer happened to notice a mis-entry in the books relating to a transaction of the previous day; this false entry made by the bookkeeper meant a loss to the employer of \$200. His suspicion aroused, the employer made a closer examination of the books and discovered another false entry of the same kind made some two weeks before, involving loss to him of another sum of about \$200. He then summoned the bookkeeper to his private office and charged him with the theft of these two items, amounting together to some \$400. The bookkeeper indignantly protested his innocence, but, on being confronted with the proofs, which were convincing, he broke down completely and confessed that he had been pilfering from his employer for a series of years past. When asked how much he had taken, he replied: "I can tell you exactly;" and he drew from his pocket a neatly written memorandum giving dates and amounts stolen, aggregating about \$15,000. The merchant, appalled at this unexpected disclosure, exclaimed: "John, what have you done with all this money?" John replied: "With the first \$3,500 taken I bought a little house and lot in New Jersey, where I am living; all the rest of the money I put into savings banks in this city, where it now is, intact; and I am ready to make restitution of all of it to you and, as soon as the deed can be prepared, I will convey to you the house in New Jersey, which is worth all I gave for it." In verification of his statements he produced the savings banks books showing the deposits in his name, and he said: "I am ready to go with you now to these banks and draw out these moneys and repay them to you." Events were moving rapidly, but the merchant summoned a carriage and the two men started out to make the round of the savings banks. As they entered the carriage the bookkeeper drew from his pocket a roll of bank bills, containing several hundred dollars, which he handed to his employer, saying: "Here, this is part of your money—take it." They visited the savings banks, drew out the deposits and when they returned to the office the merchant had recovered all that had been stolen from him except the New Jersey house, and that was duly conveyed to him afterward.

Now, who can tell how many occurrences similar to this are daily happening? except as to the feature of restitution in the last case cited;

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that feature was surely unique. Crimes of burglary, of robbery, of blackmail, of rape, of larceny, of assault, are being constantly committed that never come to the public ear. The victims of these crimes endure them in silence, impelled by multitudinous motives. A merchant may have apprehension that if it becomes known that he has sustained loss through robbery or embezzlement, his commercial credit may be seriously impaired; other victims shrink from the annoyance and publicity of appearing as prosecutors at a criminal trial and reason that even the conviction of the offender cannot in any degree repair the loss or damage they have already suffered; others are restrained by distrust of the police or by fear of revenge by the offender or his allies; the situation or conduct of the victim himself at the time the crime was committed may have been such as to cast discredit or ridicule upon him if publicly disclosed; pity for the guilty person, professing penitence, or for his innocent family or the fact that the offender was his relative may restrain the victim from conducting a prosecution that would bring disgrace and suffering without any compensating benefit. These and countless other like inducements not to prosecute control the action of the victim in possibly a majority of all the cases where crimes are committed. It often requires public spirit and a strong sense of justice and of public duty to sustain a complainant in pressing a criminal prosecution to final conviction.

In addition to these unpublished crimes, there are numerous cases where crime is committed and reported to the police, but proceed no further. In these instances, the offender may be known, but has escaped, or the offender is unknown and eludes detection; in either case there is no conviction and the crime remains unpunished. All these crimes, both those that are unpublished and those that are unpunished, cut no figure in the statistics of crime. What proportion they bear in number and in magnitude to those included in statistics cannot possibly be known and yet they constitute a very large part of the total volume of crime. Do these unpublished and unpunished offenses bear a constant relation to the crimes of the statistics, both increasing or decreasing in like ratio? The prosecution and punishment of crime is designed to check its commission; that is, to reduce the number of crimes committed. Is it not probable, then, that as the number of crimes that are detected and punished increases, the number of those crimes that are unpublished and unpunished will tend to decrease instead of increase? That the ratio between the two classes will be, not a direct, but an inverse ratio? There is no possible means of arriving at a positive and confident answer to these questions. All that is certain is that any criminal statistics that can

possibly be gathered must relate to a part only, and doubtless a minor part, of the whole volume of crime and that there is no possible means of learning whether the magnitude of that known part varies in a direct or in an inverse ratio to that of the rest of the volume. Is crime increasing? This is a question vastly interesting and important; whether the question relates to the number of crimes committed or the number of criminals, it embraces the whole body of crime actually committed in the country. To this question, criminal statistics cannot be made to yield any answer.

This conclusion, however dispiriting, does not impugn the value of statistics of crime. There are many problems where such statistics are not only useful but indispensable. "Statistics are our chief source of knowledge concerning the elements of population that enter into the criminal classes, the essential condition of these elements, the proportion of prisoners convicted for the different kinds of offenses." (Annual Report of 1907 of American Prison Association, p. 208.) Perhaps the highest value of criminal statistics consists in the light they may throw upon the practical effects produced by penal legislation, by judicial procedure and by the administration of police and detective officers. For example, within the past decade, radical changes in the administration of justice have been established in this country by laws relating to juvenile offenders and by the extended use of the suspended sentence and probation. A question has arisen in many minds whether the severity of the penal law has not thus been unduly relaxed. It is a matter of supreme importance to know whether, and how far, the tenderness of the modern law toward children serves to rescue them from a life of crime—to know whether the clemency of the law toward adults by suspension of sentence and probation promotes their rehabilitation, and to know to what class of offenders this clemency may properly be extended—to know whether these milder methods of treatment are affording adequate protection to the public or whether sterner measures of restraint and discipline may be made more effective in repressing crime. These vital questions can receive final answer only by following the subsequent career of the offenders to whom these methods are applied and thus gaining data for statistical tabulation. In the same way, the virtue of the indeterminate sentence ought to be substantiated by the statistical test. Statistics can be made to show what class of crimes comes most frequently before the courts in a given community and whether an increase in the severity of punishment tends to increase or diminish the number of convictions.

A movement is now in progress which may greatly widen the scope

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of criminal statistics. It has long been realized that many persons sentenced for crime are feeble-minded and seriously defective, mentally and physically, but, within the past few years, the conviction has been growing that our penal system is radically imperfect in that it provides no adequate means for deciding whether or not a person on trial for crime is really responsible criminally. Some two years ago the writer of this report had his attention and interest directed to a convict confined in the State Prison of one of the western States. The man was subject to seizures which were diagnosed (possibly correctly) as of an epileptic nature. They were attacks of acute mania when he became violent and was apparently unconscious of his acts, as he retained no memory of what had occurred during the attack. In one of these seizures he committed a violent assault upon and killed the foreman of the factory where he was a workman. He was convicted of murder and sent to the State prison. There he was subjected to close medical observation and treatment and last year underwent a surgical operation which resulted in the discovery of a needle in or upon the surface of the brain, with a thickening of the adjacent part of the skull. The removal of the needle was followed by a quick recovery; the general health of the man, which had been reduced, rapidly improved, and there has since been no recurrence of the spasmodic seizures. Last April he was discharged from the prison upon parole, or conditional pardon, and his future career will be watched with interest for the appearance of any criminal tendency. It cannot be doubted that many of the convicts now confined in prison are constitutionally abnormal, on the border line between sanity and insanity, or mentally defective to such a degree that they are not fit subjects for penal treatment. The protection of the public requires that they should be confined, not in prison, but in an institution where they can receive medical and psychopathic treatment. The stern discipline of the prison may often serve positively to aggravate the infirmities from which they suffer and render them more dangerous to the community on their discharge. To meet this necessity, it is now demanded that every person tried for crime shall be subjected to a psychological and medical examination by experts to ascertain and report whether his mental or physical condition is so far impaired or so far abnormal as to render him irresponsible criminally. Such report would be an invaluable aid to the court in determining whether the offender should be committed to prison for a limited term or to a custodial institution for an indefinite period, to be released only when his release will be consistent with safety to the public.

Examinations of this kind have lately been conducted, with results interesting and notable, in the New Jersey State Reformatory, in the

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Reformatory for Women at Bedford, New York, in the Tombs Prison in New York City and elsewhere; they have shown that a large fraction of the number of prisoners examined are mentally defective and below the line of criminal responsibility for their acts. The Prison Association of New York has recently organized an active committee, comprising eminent specialists in mental disease, to promote the legislative adoption of a system requiring the medico-psychological examination of all persons placed on trial or imprisoned for crime. If the movement in this direction should prove successful, the contemplated examinations might furnish a mass of data for the establishment of a new department in the science of criminal statistics.

There are numberless legal, sociological and economic problems bearing upon the efficiency of the police force and of the administration of justice by the courts, on immigration, education, marriage and divorce, commercial prosperity or depression, drunkenness and vagrancy, lunacy and idiocy, unemployment and poverty, all in their relation to crime, upon which criminal statistics may be made to throw needed light.

To sum up, it is but a truism to say that statistics, to be useful for any purpose, must be comprehensive, accurate and uniform. What statistics we now have are deficient in all these qualities. To secure the ultimate introduction of these lacking qualities into our criminal statistics must be made the aim of present endeavor. The institution in each State of the Union of a Bureau of Criminal Statistics, all these Bureaus brought into harmonious and united activity through the coöperation and under the guidance of the Federal Census Bureau, is urged as the most effective means to this end. To stimulate interest and effort toward the establishment of such State Bureaus is presented as the chief burden of this report.